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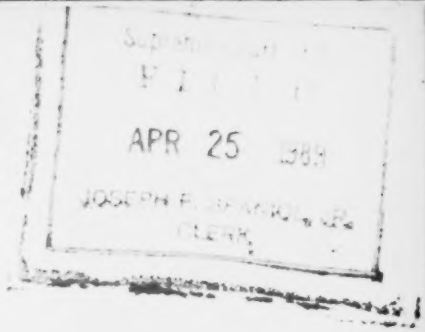

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

William Crist, jr.

Petitioner

V.

Patricia B. Adduci, Commissioner, New York State Department of Motor Vehicles; Brian J. Lawson and James L. Pemberton

Respondents

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For The Second Circuit

PRO SE
William Crist, jr.
44 Elm Avenue
Larchmont, New York
10538
(914) 834-8027

QUESTIONS PRESENTED

The New York State Statute of limitations was or was not applicable in this case.?

. . . . . .

New York Motor Vehicle Law section 332,333 AND 334 are or are not applicable to an interstate tractor-trailer chauffeur ?

. . . . . .

Does a New York Court judgement for money hold in continuum the State statute beyond three years its Statute of Limitations laws.?

" due process asks whether government has treated someone fairly. " That "someone" in this case is the Plaintiff, William Crist,jr.

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OPINIONS BELOW

At a stated term of the United States Court of Appeals for the Second Circuit ,held at the United States Courthouse in the City of New York on January 26,1989 did deny petition for a rehearing for appellant pro se William Crist,jr in Case Docket No. 88-7522

At the same Court as above, the Judgement of the United States District Court for the Southern District of New York was affirmed -Docket No 88-7522 on December 28, 1988.

On May 9,1988 , in Case 87 Civ 5714(KC) in an opinion and order of District Judge Kenneth Conboy did dismiss as time-barred claim of William Crist jr against defendants Adduci, Lawson and Pemberton.

Copies of the decisions are found in the Appendix.

JURISDICTION

As petitioner has exhausted his last remidy before the United States Court of Appeals for the Second Circuit , with their denying a petition for a rehearing on the part of William Crist,jr in Docket 88-7522 on January 26,1989.

Therefore, This Court has jurisdiction.

STATUTES INVOLVED

UNDER THE BILL OF RIGHTS TO THE UNITED STATES CONSTITUTION :

Amendment 1. - The right to petition the government for a redress of grievances.

Amendment 4 - The right to be secure in their ... and effects, against unreasonable ... seizures, shall not be violated.

Amendment 14 - No State shall abridge the privileges or immunities of citizens ; nor deprive any person of life,liberty,or property, without due process ... nor deny any person equal protection of the laws.

PRELIMINARY STATEMENT

This Case is about the denial of a basic civil liberty - The Right to make a living. -

STATEMENT OF THE CASE

On September 21,1981, there was a police accident report filed concerning a parked 1978 Honda auto in the town of Clifton Park, New York. The vehicle was according to the police report, parked unattended. and owned by a Brian J. Lawson. It was according to the police report involved in an accident with a 1977 Mack tractor, owned by a Larchmont Trucking Service, 35 Roslyn Pl. Mount Vernon, New York. and driven by a Johhnie Morgan of 639 S 5th Ave. Mount Vernon, N.Y.

Brian Lawson brought suit thru his attorney, James L. Pemberton for this accident against William Crist for property damages for $1500. in New York Supreme Court,Albany County. Without any knowledge of this action of theirs, an default judgement was entered on March 21,1983.

When the judgement was not satisfied, attorney Pemberton took action where he had the department of Motor Vehicles(DMV) suspend the license ofWilliam

Crist ,date of birth June 28,1957, on March 14,1984. When that happened,thou the efforts of an attorney, Norman Kaplan was this license lifted. That was on May 3,1984.

On May 3,1984 ,the Department of Motor Vehicles suspended the license of to quote them " William Crist A/K/A William Crist,jr date of birth September 7,1924. Where the DMV ever got the A/K/A is a mystery. William Crist,jr never used any such on his license.

What is a greater mystery is where did anyone get the name William Crist connected with any accident with any vehicle owned by a Brian Lawson on 9/21/81.

Shortly after, william Crist,jr did speak to Mr. James Pemberton about this error of having the wrong persons license suspended. Nothing was achieved in this phone conversation.

In September 1985, William Crist,jr went to the Supreme Court Building in Albany, New York to see a Judge about this judgement and the suspension of his license. He was told by the Court personel that he could not see any Judge and that he shoud write a Judge who they gave me his name. I wrote to Judge Edward Conway on October 31,1985 asking for his help. He wrote back on Nov. 6,1985 that " this Court has no jurisdiction over the suspension... .You will have to seek any relief ... form the Motor Vehicle Commissioner.

After contactacted Motor Vehicle who informed me that they coud do nothing until the judgement was removed, I wrote again Judge Conway on November 11, 1985 , informing him that. On December 17, 1985, William Crist,jr wrote to the Commissioner of Motor Vehicles , in Albany N.Y. I received back to contact Attorney Pemberton.about payment.

In a latter letter from Judge Conway on Dec.17 1986, he wrote " pleased be advised that if you can not receive any relief from motor vehicle Commissioner, then your only recourse is to pay the judgement or obtain counsel for advice. No court can give legal advise to anyone. Our only function is to decide matters that are brought before us or conduct trials of this matter."

Judge Conboy has clearly ignored the "matters" that William Crist,jr has brought to his attention.

In a latter letter ,May 18,1987 to Judge Robert Sise, Chief Administative Judge, he replied on May 22, 1987 " ... Judge Conway ... does not have the authority to take action on a letter writen by you " . He continues " if ... Motor Vehicles is wrongfully denying you reinstatement of your license you probably should seek legal counsel to explore the possibility of proceeding to have the matter brought to Court where an assigned judge will decide the issue. Court administrators cannot grant you the relief you seek."

On June 23,1987, I wrote on the matter to Chief Judge Sol Weichler of the Court of Appeals of theState ofNew York.. On June 25,1987, William Crist,jr received a letter from the Clerk of that Court, Donald Sheraw, in Judge Weichler behalf. The letter states " Its jurisdiction is specifically circumscribed by New York State constitutional and statutury provisions. Only upon compliance with these provisions is review before this Court possible. Thus, your letter request to set aside a judgement cannot be granted. Their letter continues " Neither the Court nor any of its judges, individually, can intervene in any case not jurisdictionally before it pursuant to the above provisions "

Stonewalled by the Judges and their Court in New York State, William Crist,jr filed suit in the Southern District Court of the United States. on August 7,1987.

REASONS TO OVERRULE THE PREVIOUS
DECISIONS OF THE FEDERAL COURTS.

In the opinions of the District Court and the Court of Appeals that have ruled against William Crist,jr on the basis of that the New York Statute of Limitations of some three years has expired have ignored the efforts that William Crist jr went to,well before any statute of limitations could be raised. Going personally to the Supreme Court in Albany, and writting to the Judges in the New York State Court had clearly established his First Amendment Rights "to petition the government for a redress of grievances" To ignore this petition to the Judges by any Court under the guise that his rights are now expired by any statute of limitations is clearly unconstitutional. Unlike the Federal system in which William Crist,jr finds reasonable Pro Se services, the State of New York provided none.

Even if one would assume that the New York Statute of Limitations of three years would apply in this case, one must be faced with the judgement of the New York Court against William Crist,jr for some $1500. It is the contention that as long as the judgement stands the statute of limitations is not applicable. The Lower Court have ignored this position of William Crist,jr. The 14th Amendment clearly states that no state can " deny to any person... equal protection of the laws " William Crist,jr is being denied his right to petition the Courts to throw out the judgement in this case. There is no time frame to "equal protection of the laws". There is nothing "equal" when Lawson and Pemberton can sit on their judgements against William Crist jr and he can have no defense against them .

When one reads in the decision of Kenneth Conboy 5/9/88 on Page 13A of the appendix he states " The court sits as a state court with regard to this pendent claim . ... .. Therefore as the plaintiff is a resident of New York, New York's statute of limitations for negligence must be applied" Yes' , Judge Conboy is right, William Crist,jr does live in New York State -but he has ignored the fact that the plaintiff makes his living driving in interstate commerce. Federal law should take precident over State law when there is present a gross miscarrage of justice. There is no statute of limitations written in the 14th amendment.

It is a fact that a interstate motor carrier domiciled in New York State operating as a certified Interstate Commerce Commission carrier are not subject to insurance regulation of the State of New York.. Yet they think

this arrogant Department of Motor Vehicles can arbitrally take a interstate drivers license away without even a hearing. Such action against William Crist,jr is clearly against the 4th amendment " the right ... to be secure ... against unreasonable ... seizures " There is no statute of limitations involved in anyone trying to get back what somebody else stole from him.

The previous Courts have ignored plaintiff's contention that as an interstate driver the New York State Vehicle and Traffic Law section 332 etc are unconstitutional. There is no statute of limitations to attacking the validity of that statute.

In the case of the judgement against the plaintiff, this section 332 makes the Dept. of Motor Vehicles a bill collector . That the executive branch of government can not do . The role of a bill collector lies

in the Sheriff's department that is within the judicial branch of governemt. One can not envelop the executive branch of any state or federal government into the judicial branch of government.

One need not question the right of the New York Department of Motor Vehicles to suspend or revoke the chauffeur's license of anyone for a reasonable cause. What the plaintiff does challange is that no court can order, nor no individual with a judgementfrom the New York Courts can force the New York Dept of Motor vehicles to suspend the driving rights of any one. Only on the independent action of the Motor Vehicle Department can this be done. WHY - because a motor vehicle accident may or may not become within the juristiction of the Department - for example an accident to property between two autos in a private shopping mall.

What is clearly unconstitutional is that the statute lacks the fundimentals of due process. the right to be found guilty of only the charges presented to a Court. In the case of the plaintiff,William Crist,jr he has been found thru a default action of Lawson and Pemberton to be liable for the monetary sum of some $ 1500. Nothing more, nothing less.

What also is unconstitutional in this rag piece of legislation is the threshold figure for money - " the judgement... shall mean any judgement in excess of six hundred dollars for damages." $ 599. ,one keeps his or her license,;$601. one looses his or her license. (page 2B appendix) The equal protection of the laws under the 14th amendment is but a joke under that sort of monitary criteria..

From an editorial, the plaintiff quotes from the Wall Street Journal of 3/20/89 - " due process asks whether government has treated

someone fairly" That quote is from your very oun, Justice William Brennan. What is more unfair than Lawson and Pemberton getting a judgement against the wrong man and the motor vehicle department suspending the license of the wrong man. No wonder the plaintiff is looking for his pound of flesh.

There is an old saw about no law being better than a bad law. This section 332 is not only bad ,it is unconstitutional. This law violates the seperation of powers between the judicial and legislative branches of government. What if the plaintiff files for bankrupcy and wipes out the judgement? The license suspension is also out because the Dept of Motor Vehicle had not held on its oun action that the party was involved. The judicial branch of government can not run the executive branch of government. Clearly one must see what happens when such occurs.

Respectfully Submitted
William Cusick

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

William Crist,jr

88-7522

Appellant

Petition for Rehearing

v.

Patricia B. Adduci, Commissioner, New York State Department of Motor Vehicles; Brian j. Lawson, and James L. Pemberton.

Appellee

Decided - January 26,1989.

A petition for a rehearing having been filed by appellant pro se William Crist,jr.

Upon consideration thereof, it is Ordered that said petition be and it hereby is DENIED.

Before Newman and Altimari, Circuit Judges, and Thomas P Griesa, District Judge, for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

William Crist,jr

Appellant

v. Appeal No. 88-7522

Patricia B. Adduci, Commissioner, New York State Department of Motor Vehicles; Brian J. Lawson, and James L Pemberton.

Appellee

DECIDED : December 28th , 1988

Before Newman and Altimari, Circuit Judges and Thomas P Griesa * , District Judge.

* Of the United States District Court for the Southern District of New York, sitting by designation.

O R D E R

William Crist,jr appeals pro se from a judgement of the District Court for the Southern District of New York (Kenneth Conboy, Judge) dismissed as time -barred his complaint against Patricia B. Adduci, the Commissioner of Motor Vehicles, and two non governmental persons, Brian J. Lawson and Attorney James L. Pemberton. Lawson, represented by attorney Lambert, had sued Crist in the New York Supreme Court for property damage incurred in an automobile accident. Upon Crist's failure to answer the complaint, a default judgement was entered against Crist. Lawson's complaint had sought $ 1500 in damages . On May 8,1984, the Department of Motor Vehicles suspended Crist's driver's license, registration, and plates, pursuant to section 332 of the New York Vehicle and Traffic Law, which provides for suspension, when a judgement of more than $ 600. arising from use or ownership of an automobile remains unsatisfied for more than fifteen days.

Crist filed this federal court suit on Aug. 7,1987. He contends that he had nothing to do with any accident involving Lawson. Judge Conboy, applying New York's three-year statute of limitations see Okure v. Owens , 816 F 2d 45 (2d Cir 1987) cert. granted, 108 s Ct 1218(1988) concluded that Crist's claim against Adduci, presumably brought under 42 U.S.C. § 1983 (1982) was time-barred. However, the District Judge granted Crist leave to replead to allege facts indicating that he did not become aware of the suspension until a date within the limitation period. Crist declined to replead. Judge Conboy then exercised pendent juristiction over the state law negligence claim against Lawson and Pemberton and dismissed this claim as clealy time-barred under state law.

We have some doubt about the correctness of the District Court's exercise of pendent party juristiction over the claim against Lawson and

Pemberton. Federal Court juristiction over the section 1983 claim against Adduci was not exclusive and pendent part jurisdiction in such circumstances is not clear.. See National Resources Trading Inc. v. Trans. Freight Lines 766 F 2d 65,68(2d Cir. 1985) ; Weinberger v. Kendrick 698 F. 2d 61, 76-77 (2d Cir 1982), cert denied 464 U.S. 818 (1983). Such jurisdiction is particularly doubtful in litigation brought under section 1983, see Aldinger v. Howard, 427 U.S. 1 (1976), although that decision may be limited to governmental entities, which were then thought to be outside the scope of section 1983. Moreover, with the federal claim failing at the outset, the appropriateness of exercising even pendent claim jurisdiction would have been questionable in this case. Nevertheless, appellant has not challenged the exercise of pendent part jurisdiction, and we can sympathize with Judge Conboy's desire to put

an immediate end to all aspects of this time-barred litigation.

Without definitively ruling on the availability of pendent party jurisdiction in these circumstances, we will accept for purposes of this appeal the appropriateness of exercising such jurisdiction. The rulings of the District Court with respect to the bar of the statute of limitations were plainly correct, and the judgement of the District Court is therefore affirmed.

UNITED STATES DISTRICT COURT
SOUTHERN DIDTRICT OF NEW YORK

William Crist,jr

87 CIV 5714(KC)

Plaintiff

-v-

Patricia B Adduci, Commissioner,New York State Department of Motor Vehicles Brian J, Lawson and James L Pemberton

Defendants

Decided May 9, 1988

By Kenneth Conboy

United States District Judge

Opinion and Order of

Kenneth Conboy, District Judge;

On September 21, 1981 defendant Brian j. Lawson was involved in a property damage motor vehicle accident with another vehicle. Lawson brought suit against one William Crist in New York Supreme Court, Albany County. The defendant James L Pemberton prosecuted the action as Lawson's attorney. William Crist defaulted and a default judgement was entered in the Albany County Clerk's office on 3/21/83 The judgement was not satisfied. The New York State Department of Motor Vehicles(DMV) suspended the license,registration and plates of William Crist , date of bitth June 28,1957 on 3/14/84 . On May 3, 1984, the DMV restored Crist's license. On May 8, 1984 the DMV suspended the license,registration and plated of " "William Crist A?K?A William Crist Jr the plaintiff, date of birth Sept. 7,1924.

This person resided at the same address as the other William Crist, who is the plaintiff's son.

Plaintiff filed this complaint on August7, 1987. He alleges that defendant Adduci,acting in her official capacity as Commissioner of the New York State Departemnt of Motor Vehicles deprived him of due process by suspending his driver's license. Plaintiff further alleges that defendants Lawson and Pemberton acted negligently in procuring the default judgement that led to the suspension of his license. He asserts that he is neither the driver nor the owner of the vehicle involved in the accident with defendant Lawson.. Plaintiff seeks a mandatory injunction directing the Commissioner of Motor Vehicles to vacate the Order of Suspension of his driver's license, a declaratory judgement holding New York's Vehicle and Traffic Law section 332 unconstitutional, and compensatory and punitive

damages, from Lawson and/or Pemberton, in the amount of six hundred thousand dollars.

The defendants move to dismiss the complaint. Defendant Adducci bases her motion on the ground the Statute of Limitations has lapsed. Defendant Lawson and Pemberton also assert the statue of limitations as a bar to plaintiff's claims and other grounds as well.

LEGAL ANALYSIS

The plaintiff's pro se complaint must be construed liberally. Haines v Kerner 404 US 519, 520-21 (1972) (per curiam) . I appears that plaintiff alleges the following claims;;a section 1983 [1] claim against defendant Adducci; 2) a pendent state claim of negligence against defendants Lawson and Pemberton.[2]

A. The Section 1983 Claim

" The proper (Statute of) limitations to apply to all section 1983 claims in New York is three years " Okure v Owens816 F 2d 46,47 (@2d Cir 1987) cert granted , _ U.S. _ 108 S Ct 1218(1988) The bar of the statute of limitations would applyto plaintiff even though he appears pro se . See Zerman v. Ball 735 F 2d 15, 20 (2d Cir 1984; Ervin v Lanier 404 F Supp 16,21 (E.D.N.Y. 1975)

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1. 42 USC sect 1983 (1982) reads in relevant part

> Every person who, under color of any statute ordinance, regulation, custom, or usage,of any state ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges or immunities secured by the Constitution and laws , shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

2. Under these facts, Lawson and Pemberton are not subject to a section 1983 claim. Cf Taylor v. Nichols 558 F. 2d 562,564(10th Cir 1977) (act of filing claim of criminal conduct does not constitute state action) ; Stephenson v Esquivel, 614 F. Supp. 986, 990 (D.N.M. 1985)" private citizens do not become state actors just because they were complainants ... and the police made an arrest") ; Rodgers v Lincoln Towing Service

596 F. Supp 13,21 (N.D. I11. 1984) (A private citizen does not become a state actor just because he reports a crime and the police rely on his report to make an arrest ") , aff'd ,771 F .2d 194(7th Cir. 1985).

The statue of limitations begins to run at the time " the plaintiff becomes aware of an injury for which he . . . may recover damages in a civil suit." Jones v. Coughlin , 665 F Supp. 1040, 1044(S.D.N.Y. 1987) see Singleton v. City of New York. 632 F.2D 185 187 (2d cir. 1980) cert. denied 450 U.S. 920(1981) ; Greenwood v. State of New York,Office of Mental Helth 645 F Supp 111 115 (S.D.N.Y. 1986)

Plaintiff did not file this complaint until August 7, 1987. The section 1983 claim appears to be barred by the lapsing of the statute of limitations. [3]

3 Although the plaintiff undoubtely continued to feel the effect of the suspension of his licensse at the time within the limitations period, as a matter of law this is not sufficient to warrant invocation of the " continuing violations" theory. See United Air Lines v. Evans 431 U.S. 553, 558 (1977) ; Pike v. City of Mission, Kan., 731 F 2d 655 , 660 (10th Cir. 1984)

B. The Negligence Claim

Defendants Lawson and Pemberton are charged with negligence for their roles in obtaining the default judgement, and then initiating the process resulting in the suspension of plaintiff's license. The court sits as a state court with regard to this pendent claim. See Burgerv.v. Health Ins. Plan of greater New YorkNo 87 Civ 8238, slip op. at 5 n.1 (S.D.N.Y. 4/15/88; Hunnewell v. Manufacturers Hanover Trust Co.,628 F. Supp. 759, 761 (S.D.N.Y. 1986) Therefore as the plaintiff is a resident of New York, New York's statute of limitations for negligence must be applied. See In re Agent Orange Prod. Liab. Litig., 597 F. Supp. 740, 801 (E.D.N.Y.1984) ; Loengard v. Santa Fe Indus 573 F. Supp 1355, 1359 (S.D.N.Y. 1983) New York's statute of limitations for an action in negligence resulting

in injury to property is three years. N.Y. CPLR 214 (4) (Mc Kinney Supp. 1988). The statute of limitations begins to run on the date of the injury, not the date of its discovery. See Victorson v. Bock Laundry Mach. Co 37 N.Y. 2d 395,403 335 N.E. 2d 277, 278-79, 373 N.Y.S. 2d 39,44(1975) ; City of Niagra Falls v. Rudolph 97 A.D. 2d 971 469 N.Y.S. 2d 42, 43 (4th Dept 1983) mem) Thus, this cause of action, filed three years and three months after the occurrence of the act plaintiff complains of, is undeniably is time-barred.

CONCLUSION [4]

Plaintiff's first claim appears to be barred by the lapsing of the statute of limitations. Therefore the claim against defendant Adduci is dismissed without prejudice to replead timeliness, i.e.,that the plaintiff did not receive notification ofthe DMV's action until after August 6, 1984. Plaintiff is granted leave to file an amended complaint within thirty days from the date this Opinion an Order is

Signed.

The claim against defendants Lawson and pemberton undeniably is timed -barred. Therefore, the claim against those defendants is dismissed with prejudice.

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4 The resolution of this case makes it unnecessary to reach the constitutional issue raised by th plaintiff.. See United States v. Leon 766 F. 2d 77,78 (@d Cir. 1985); Spicer v. Hilton 618 F . 2d 232, 239-41 (3d Cir . 1980)

So Ordered

Dated May 9, 1988

Kenneth Conboy
United States District
Judge